

**O-022-17**

**IN THE MATTER OF APPLICATION NO 3116824  
BY  
CLEAR SCORE TECHNOLOGY LIMITED  
TO REGISTER A SERIES OF TWO TRADE MARKS**

**CLEARSCORE**

**AND**

**ClearScore**

**IN CLASSES 35 AND 36**

**AND OPPOSITION THERETO  
UNDER NO 405529  
BY  
EXPERIAN LIMITED**

## **BACKGROUND**

1. On 8 July 2015 Clear Score Technology Limited ('the applicant') applied to register the above trade mark in classes 35 and 36 of the Nice Classification system<sup>1</sup>. The parts of the specification which have been opposed are as follows:

### **Class 35**

Customer targeting and marketing services; collecting business information; collection and systemization of business data; business advice relating to financial rating; data analysis; data processing services; data processing management; computerised data processing; computerised data verification; data retrieval services; database management services; identity authentication and verification services; customer profiling services; risk management services; information, advisory and consultancy services relating to all the aforesaid.

### **Class 36**

Financial affairs; monetary affairs; real estate affairs; credit reference agency services; credit assessment and credit screening services; credit rating services; credit reporting services; preparation of credit rating reports; credit repair services; credit brokerage; credit risk information services; credit scoring services; credit scorecard services; consumer credit history services; previous credit application history services; credit information services; evaluation of the credit worthiness of companies and private individuals; providing information in the field of credit application processing, risk analysis, financial and related data analysis, risk modelling and analytics and analysis; providing information over the Internet in the field of credit application processing, risk analysis, financial and related data analysis, risk modelling and analytics and analysis; credit inquiry and consultancy services; financial consultancy relating to credit services; advisory services relating to credit and debit control; debt management services; financial assessment of company credit and providing information relating thereto; financial assessment of individual credit and providing information relating thereto; advisory services relating to financial planning; consumer credit consultancy; financial advisory services relating to credit; financial rating and credit reports; aggregation of financial data; aggregation of company financial data; aggregation of personal

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<sup>1</sup> *International Classification of Goods and Services for the Purposes of the Registration of Marks under the Nice Agreement (15 June 1957, as revised and amended).*

financial data; providing information in relation to credit management; insurance services relating to credit; information, advisory and consultancy services relating to all the aforesaid.

2. The application was published on 21 August 2015, following which Experian Limited ('the opponent') filed a notice of opposition against the application.

3. The opposition was brought under sections 3(1)(b) and 3(1)(c) of the Trade Marks Act 1994 ('the Act').

4. The opponent outlines its objections as follows:

*"3(1)(b) The sign 'clearscore' is a combination of English words consistent with the usual use of English grammar. Neither of the words CLEAR or SCORE is distinctive when considered independently and in relation to the services covered by the applications. The combination of the words CLEAR and SCORE does not create a distinctive mark that is greater than the sum of its two descriptive parts.*

*Alternatively, the sign 'clearscore' cannot serve to identify the services for which the applicant seeks registration as originating from a particular undertaking and so distinguish these services from those of other undertakings."*

*3(1)(c) The meanings of the words CLEAR and SCORE, in the context of the opposed services, have meanings such that CLEARSCORE indicates an easy-to-understand credit score, or a free-of-charge credit score or services associated with such services.*

*A reasonably well informed, observant and circumspect consumer of such services would not be able to ascertain the origins of the services through the mark CLEARSCORE, but would merely be informed as to their general characteristics."*

5. On 2 February 2016 the applicant filed a counterstatement which denied all of the grounds raised in the notice of opposition. It submitted the following:

*“2...the mark applied for is inherently distinctive in relation to the services which are subject to the opposition proceedings. Whilst the Applicant admits that the sign is made up of the English words ‘clear’ and ‘score’, it denies the allegation that the combination of these words does not create a distinctive mark.*

*3...the sign is apt to distinguish the Applicant’s services and puts the Opponent to strict proof of its allegations that it is not...*

*5. The Applicant admits that the words ‘clear’ and ‘score’ may have some meaning in the context of the services at issue. However, the Applicant denies that the combination of these words, CLEARSCORE, exclusively designates any characteristics of the services at issue. The Applicant also denies that the average consumer would not be able to rely on the sign to indicate the origin of the services...”*

6. Both parties filed evidence and skeleton arguments. A hearing took place by video conference. The applicant was represented by Mr Julius Stobbs of Stobbs IP. The opponent was represented by Ms Ashton Chantrielle of Counsel, instructed by the opponent’s legal department.

### **Preliminary issues**

7. On 28 September 2016 the opponent submitted a request to file further evidence. It comprised a single page historic search of the applicant’s website and a copy of a letter before action. Ms Chantrielle submitted it was vital to her case. Mr Stobbs was of the view that it did not advance the opponent’s case. In the interest of making a decision based on all of the relevant material, I allowed the evidence to be admitted. Mr Stobbs chose to respond in oral submissions at the hearing, which I will refer to as necessary below.

8. I note that the application is made for a series of two marks, CLEARSCORE and ClearScore. Throughout the remainder of this decision I shall refer to the applicant's mark as CLEARSCORE by which I mean to include both marks as there is no material difference in the assessment.

## **EVIDENCE**

### Opponent's evidence

#### **A witness statement by James Jones and exhibits JJ1 - JJ12**

9. James Jones, employed by Experian, provides two definitions of 'clear', taken from Collins English Dictionary:<sup>2</sup>

- free from debt or obligation
- (of money profits etc.) without deduction

10. With regard to the word 'score' which he states has been used for at least 35 years in the context of the credit reference industry, Mr Jones submits that it has meanings including, 'an account of amounts due'<sup>3</sup>.

11. At paragraph 15 of his statement Mr Jones states:

*"The words 'clear' and 'score' are often used in combination in the context of credit files, credit scores etc. by those in the credit reference agencies, along with the general financial industry. Through my public education work for the Opponent over the last sixteen years, I can confidently say that the words 'clear' and 'score' regularly feature in the questions people ask and the advice we give."*

12. Exhibits JJ3-JJ8 do not show the words 'clear' and 'score' used together. Mr Jones says of these exhibits:

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<sup>2</sup> Exhibit JJ1

<sup>3</sup> Exhibit JJ2

*“17. Even if the words are not used next to each other, if the words are used in the same sentence or the same article, the meaning of the words taken together does not change.”*

13. Mr Jones states that exhibits JJ10-JJ12 show the words clear and score used together in the context of financial matters.

- JJ10 is one of the opponent’s brochures titled, ‘Gain a clear vision with scoring’. The two pages have the words ‘scoring’ and ‘scores’ highlighted throughout the document. Other than in the title, ‘Clear’ does not feature. The word ‘score’ cannot be seen anywhere in the exhibit.
- JJ11 is taken from the opponent’s website on 8 June 2015. The pages concern digital debt collection. The word ‘clear’ appears in the exhibit 11 times. At no point does it appear close to or next to the word ‘score’.
- JJ12 Mr Jones describes as the opponent’s insight report for January 2014. The first page of the report features the word clear in the context of an analysis of the opponent’s services which are said to ‘paint a clear picture’. The word ‘score’ is shown 11 times in the remainder of the document, in most cases within the term ‘credit score’. At no point is it shown in connection with the word ‘clear’.

#### **A witness statement by Joanne Leahy and exhibits JL1 – JL8**

14. Ms Joanne Leahy, the opponent’s second witness is employed by the opponent in PR and Communications. Ms Leahy states that the words ‘clear’ and ‘score’ are ‘an essential part of the core narrative when talking about credit referencing’ and states that she would challenge these terms being ‘made into brand terminology’ as the combination of words is likely to be used in relation to the goods and services for which the application is made. In support of this view Ms Leahy provides a number of exhibits.

- JL1 is taken from [www.transunion.com](http://www.transunion.com) on 22 October 2015. The article is titled, ‘Credit Management: Five Simple Steps Toward Better Credit’. The words

'clear' and 'scores' are highlighted in the following sentences: 'The first step towards better credit management is to see a clear picture of your credit profile. Order your credit reports, credit scores and debt analysis online.'

- JL2 is taken from [www.moneyadvice.service.org.uk](http://www.moneyadvice.service.org.uk) on 22 October 2015. The word 'clear' is highlighted twice, in both cases within the term 'clear your debts'. The word 'score' is highlighted three times, in each case within the term 'credit score'.
- JL3 is also taken from the money advice service website. It is titled, 'How your credit score affects the cost of borrowing'. 'Score' is highlighted 6 times, in each case in the context of the term 'credit score'. 'Scoring' is highlighted once and is part of the term 'credit scoring'.
- JL4 is taken from [www.thisismoney.com](http://www.thisismoney.com) on 22 October 2015. The article is titled, 'How to improve and protect your credit rating and check your credit report'. The word score is highlighted in the heading, 'How do I improve my score? The word 'clearing' is highlighted later in the article in the following sentence, 'Only spend small amounts and then keep clearing the balance'.
- JL5 is taken from [www.moneyadvice.service.org.uk](http://www.moneyadvice.service.org.uk) on 22 October 2015. It is titled 'Managing your credit card account'. The word clear is highlighted twice, once within 'clear your balance' and once in 'clear your card each month'.
- JL6 is taken from [www.telegraph.co.uk](http://www.telegraph.co.uk) on 22 October 2015 from an article titled, 'Martin Lewis: 20 things you must know to boost your credit score'. Point 9 is headed, 'Take 'pay to see your credit score' sites with a pinch of salt. The word 'score' is highlighted a further 6 times in the context of 'credit scores', 'lender scores' and 'universal score'.
- JL7 is taken from [www.uk.equifax.com](http://www.uk.equifax.com) on 22 October 2015. It is titled, 'Concerned about your credit score?' The first paragraph reads:

*“What’s your credit score?*

*It’s important to understand your credit score and how it can help you get credit. Your FREE Equifax Credit Score gives you your current credit score and clear easy-to-understand advice for each item on your credit report and its possible impact on your ability to obtain credit.”*

- JL8 is taken from [www.fico.com](http://www.fico.com), the article is dated March 2014 and is titled, ‘Curing Credit Score Confusion’. – Tens of Millions at a Time for Free’. The word score is highlighted in the document 11 times, for the most part when referring to ‘the FICO® score’. The word clear is highlighted in the sentence, ‘Many consumers lack a clear understanding of how credit works’.

### **A witness statement by Ernest Clark and exhibits EC1 – EC8**

15. Mr Clark is employed by CallCredit Information Group Limited. The group offers consumers three different types of credit reports. Mr Clark and CallCredit do not appear to be connected to either party in these proceedings.

16. The eight exhibits attached to Mr Clark’s statement are all taken from [www.callcredit.co.uk](http://www.callcredit.co.uk). Each is an article with the words ‘clear’ or ‘score’ highlighted within the text. For each of the eight exhibits I will list the terms or sentences that contain the highlighted words in respect of each exhibit, as well as the date on which the page was accessed or the date of the article.

- EC1 – accessed 14 April 2016  
‘A score out of 5’, ‘Credit score’, ‘Your credit rating and score’  
‘It’s the only credit report and credit score service around and gives you a clear comprehensive overview.’
- EC2 – Article date 24 July 2008 – nothing is highlighted.
- EC3 – accessed 3 May 2016  
‘Credit score’, ‘Clear view’

- EC4 – Article dated 5 June 2008  
‘Dynamic bureau scores’, ‘credit risk scores’, ‘other scores’, ‘component of the score’, ‘gauge scores’
- EC5 – Article dated 21 May 2008  
‘It’s clear that the rising cost of everyday living’, ‘clear view’
- EC6 – Accessed 20 October 2015  
‘Credit score’
- EC7 - accessed 3 May 2016  
‘In response to a clear need’, ‘credit scores them online’
- EC8 - accessed 3 May 2016  
‘credit score’, ‘own score’, ‘high score’, ‘it’s shown as a score out of 5’

### Applicant’s evidence

17. The first witness statement is by Mr Neil Monroe and does not have any attached exhibits. Mr Monroe is the Director and Principal Consultant with CRS Insights Limited, a consultancy he set up after leaving Equifax (the opponent) in February 2015. Mr Monroe provides the following explanation of credit reporting and credit scores:

*“10. The credit files held by the credit reference agencies consist of the information collected by the agency about the subject...”*

*11. The information collected for the credit file and report includes both ‘negative’ and ‘positive’ data...”*

*13...Credit reports are therefore compiled based on positive and negative data...”*

*14. A credit score is numerical value assigned to the data in the credit file...”*

*15. The credit score is a comparison tool which compares subjects with others with similar characteristics. It is a prediction that a subject is likely to behave similarly to other subjects in the agency's database who have similar profiles...*

*16. A credit score has little meaning in its own right. The number is meaningless without the contextual data which the agency should provide to explain it."*

18. Mr Monroe concludes:

*"18. The word 'clear' is not particularly helpful in the context of credit scores. It has been the case for at least the last 20 years that positive data as well as negative data is collected for the credit file and both kinds of data are factored into the calculation of the credit score. It does not make any real sense to describe a file or score composed of such data as 'clear'.*

*19. In my professional career, I have not encountered any credit reporting professional, credit grantor, consumer or other body who refers to a credit score as 'clear'. They would confirm, for example, that efforts 'to clear debt' could contribute to an increased credit score but would not refer to the concept of a 'clear' (credit) score. Consumers tend to ask if their credit scores are 'high', 'low', 'good', 'bad', 'acceptable' etc.*

19. The second witness statement relied on by the applicant is by Justin Basini with exhibits JB1 – JB5. Mr Basini is the applicant's Chief Executive Officer and has filed evidence to show that CLEARSCORE 'not only looks like a brand but also functions effectively as a brand'. The evidence comprises prints from the applicant's website, comments from third parties and prints of pages from discussion forums. In addition there is some brand recognition data and results from a Google search for 'CLEARSCORE'. I will not summarise it here but will refer to it as necessary below.

## Opponent's evidence admitted at the hearing

20. This consists of a witness statement by Andrew Mills and exhibits AM1 and AM2. Mr Mills is Assistant General Counsel for the opponent. The exhibits comprise a website history report from www.domaintools.com and a letter before action sent by the opponent to the applicant which contains the relevant text from the website history report. Mr Mills states that the opponent seeks to rely on the image taken from the applicant's website on 31 May 2015. The image referred to is very difficult to read. Mr Mills states:

*"5...I can make out the words: Credit reports and credit scores can be confusing and difficult to access and understand. We are going to make them clear. For Free. Forever."*

## **THE DECISION**

21. Section 3(1) of the Act is as follows:

"3. - (1) The following shall not be registered –

(a) ...

(b) trade marks which are devoid of any distinctive character,

(c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services,

(d) ...

Provided that, a trade mark shall not be refused registration by virtue of paragraph (b), (c) or (d) above if, before the date of application for

registration, it has in fact acquired a distinctive character as a result of the use made of it.”

22. It must be borne in mind that these grounds are independent and have differing general interests. It is possible, for example, for a mark not to fall foul of section 3(1)(c), but still be objectionable under section 3(1)(d) and/or 3(1)(b) of the Act. In *SAT.1 SatellitenFernsehen GmbH v OHIM*<sup>4</sup>, the Court of Justice of the European Union ('CJEU') stated that:

“25. Thirdly, it is important to observe that each of the grounds for refusal to register listed in Article 7(1) of the regulation is independent of the others and requires separate examination. Moreover, it is appropriate to interpret those grounds for refusal in the light of the general interest which underlies each of them. The general interest to be taken into consideration when examining each of those grounds for refusal may or even must reflect different considerations according to the ground for refusal in question (Joined Cases C-456/01 P and C-457/01 P *Henkel v OHIM* [2004] ECR I-0000, paragraphs 45 and 46).”

### **The opposition under section 3(1)(c)**

23. Section 3(1)(c) of the Act is the equivalent of Article 7(1)(c) of the Community Trade Mark Regulation, the case-law of which was summarised by Arnold J. in *Starbucks (HK) Ltd v British Sky Broadcasting Group Plc* [2012] EWHC 3074 (Ch):

“91. The principles to be applied under art.7(1)(c) of the CTM Regulation were conveniently summarised by the CJEU in *Agencja Wydawnicza Technopol sp. z o.o. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (C-51/10 P) [2011] E.T.M.R. 34 as follows:

“33. A sign which, in relation to the goods or services for which its registration as a mark is applied for, has descriptive character for the

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<sup>4</sup> Case C-329/02 P

purposes of Article 7(1)(c) of Regulation No 40/94 is – save where Article 7(3) applies – devoid of any distinctive character as regards those goods or services (as regards Article 3 of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks ( OJ 1989 L 40 , p. 1), see, by analogy, [2004] ECR I-1699 , paragraph 19; as regards Article 7 of Regulation No 40/94 , see *Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) v Wm Wrigley Jr Co* (C-191/01 P) [2004] 1 W.L.R. 1728 [2003] E.C.R. I-12447; [2004] E.T.M.R. 9; [2004] R.P.C. 18 , paragraph 30, and the order in *Streamserve v OHIM* (C-150/02 P) [2004] E.C.R. I-1461 , paragraph 24).

36. ... due account must be taken of the objective pursued by Article 7(1)(c) of Regulation No 40/94 . Each of the grounds for refusal listed in Article 7(1) must be interpreted in the light of the general interest underlying it (see, inter alia , *Henkel KGaA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (C-456/01 P) [2004] E.C.R. I-5089; [2005] E.T.M.R. 44 , paragraph 45, and *Lego Juris v OHIM* (C-48/09 P) , paragraph 43).

37. The general interest underlying Article 7(1)(c) of Regulation No 40/94 is that of ensuring that descriptive signs relating to one or more characteristics of the goods or services in respect of which registration as a mark is sought may be freely used by all traders offering such goods or services (see, to that effect, *OHIM v Wrigley* , paragraph 31 and the case-law cited).

38. With a view to ensuring that that objective of free use is fully met, the Court has stated that, in order for OHIM to refuse to register a sign on the basis of Article 7(1)(c) of Regulation No 40/94 , it is not necessary that the sign in question actually be in use at the time of the application for registration in a way that is descriptive. It is sufficient that the sign could be used for such purposes (*OHIM v Wrigley*, paragraph 32;

*Campina Melkunie* , paragraph 38; and the order of 5 February 2010 in *Mergel and Others v OHIM* (C-80/09 P), paragraph 37).

39. By the same token, the Court has stated that the application of that ground for refusal does not depend on there being a real, current or serious need to leave a sign or indication free and that it is therefore of no relevance to know the number of competitors who have an interest, or who might have an interest, in using the sign in question (Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee* [1999] ECR I-2779, paragraph 35, and Case C-363/99 *Koninklijke KPN Nederland* [2004] ECR I-1619, paragraph 38). It is, furthermore, irrelevant whether there are other, more usual, signs than that at issue for designating the same characteristics of the goods or services referred to in the application for registration (*Koninklijke KPN Nederland*, paragraph 57).

And

46. As was pointed out in paragraph 33 above, the descriptive signs referred to in Article 7(1)(c) of Regulation No 40/94 are also devoid of any distinctive character for the purposes of Article 7(1)(b) of that regulation. Conversely, a sign may be devoid of distinctive character for the purposes of Article 7(1)(b) for reasons other than the fact that it may be descriptive (see, with regard to the identical provision laid down in Article 3 of Directive 89/104, *Koninklijke KPN Nederland* , paragraph 86, and *Campina Melkunie*, paragraph 19).

47. There is therefore a measure of overlap between the scope of Article 7(1)(b) of Regulation No 40/94 and the scope of Article 7(1)(c) of that regulation (see, by analogy, *Koninklijke KPN Nederland*, paragraph 67), Article 7(1)(b) being distinguished from Article 7(1)(c) in that it covers all the circumstances in which a sign is not capable of distinguishing the goods or services of one undertaking from those of other undertakings.

48. In those circumstances, it is important for the correct application of Article 7(1) of Regulation No 40/94 to ensure that the ground for refusal

set out in Article 7(1)(c) of that regulation duly continues to be applied only to the situations specifically covered by that ground for refusal.

49. The situations specifically covered by Article 7(1)(c) of Regulation No.40/94 are those in which the sign in respect of which registration as a mark is sought is capable of designating a 'characteristic' of the goods or services referred to in the application. By using, in Article 7(1)(c) of Regulation No 40/94 , the terms 'the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or service', the legislature made it clear, first, that the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service must all be regarded as characteristics of goods or services and, secondly, that that list is not exhaustive, since any other characteristics of goods or services may also be taken into account.

50. The fact that the legislature chose to use the word 'characteristic' highlights the fact that the signs referred to in Article 7(1)(c) of Regulation No 40/94 are merely those which serve to designate a property, easily recognisable by the relevant class of persons, of the goods or the services in respect of which registration is sought. As the Court has pointed out, a sign can be refused registration on the basis of Article 7(1)(c) of Regulation No 40/94 only if it is reasonable to believe that it will actually be recognised by the relevant class of persons as a description of one of those characteristics (see, by analogy, as regards the identical provision laid down in Article 3 of Directive 89/104, *Windsurfing Chiemsee*, paragraph 31, and *Koninklijke KPN Nederland*, paragraph 56)."

92. In addition, a sign is caught by the exclusion from registration in art.7(1)(c) if at least one of its possible meanings designates a characteristic of the goods or services concerned: see *OHIM v Wrigley*

[2003] E.C.R. I-12447 at [32] and *Koninklijke KPN Nederland NV v Benelux-Merkenbureau* (C-363/99 [2004] E.C.R. I-1619; [2004] E.T.M.R. 57 at [97].”

24. The question here is whether the combination of words CLEARSCORE is a description of the services or of some characteristic(s) of those services and, thus, should be kept free for the legitimate use of other traders. Both parties accept the meaning of the two words clear and score and accept that they are used within the relevant trade. The opponent submits that when used in combination, the meaning of the individual words is not altered. The resulting term could mean a ‘good score’ or a score that is provided clearly. The applicant does not accept that the neologism is non-distinctive (or descriptive) for the services applied for, it having no relevance or generally accepted meaning in the context of the services.

25. In *Campina Melkunie BV and Benelux-Merkenbureau*<sup>5</sup>, the CJEU stated that:

“39. As a general rule, the mere combination of elements, each of which is descriptive of characteristics of the goods or services in respect of which registration is sought, itself remains descriptive of those characteristics within the meaning of Article 3(1)(c) of the Directive even if the combination creates a neologism. Merely bringing those elements together without introducing any unusual variations, in particular as to syntax or meaning, cannot result in anything other than a mark consisting exclusively of signs or indications which may serve, in trade, to designate characteristics of the goods or services concerned.

40. However, such a combination may not be descriptive within the meaning of Art.3(1)(c) of the Directive, provided that it creates an impression which is sufficiently far removed from that produced by the simple combination of those elements. In the case of a word mark, which is intended to be heard as much as to be read, that condition will have to be satisfied as regards both the aural and the visual impression produced by the mark.”

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<sup>5</sup> *Case C-265/00*

26. In *PutterScope* BL O/96/11, the appointed person said:

“8...Although I agree that it necessary for the purpose of explanation to break down the mark into its component parts, one must be aware of the danger that such an iterative approach may be unfair to the applicant. Each individual part of a mark may be non-distinctive, but the sum of the parts may have distinctive character – see *Satelliten Fernsehen GmbH v OHIM* [2005] ETMR 20 [SAT 1], at paragraph 28. Ultimately the decision making tribunal must stand back from the detailed breakdown of the mark and envisage how the entire trade mark would be understood by the public when applied to the goods of the specification. Would the average consumer consider that it was a trade mark indicating goods from a particular source or would they consider that it simply indicated the function of the goods?”

27. Much of the evidence filed by both parties is outside the relevant date. However, both sides agree that the evidence is a reasonable reflection of the terms used in the relevant field of financial activity. The mark as a whole is a neologism created from two common English words which are accepted by both sides as being words used in the financial industry. Both parties accept the meanings of the individual words. The opponent has not filed a single exhibit which shows the words ‘CLEAR’ and ‘SCORE’ used together. In many cases the words do not appear on the same page or in the same paragraph. What is evident from the evidence is that the word ‘CLEAR’ is used frequently in respect of clearing debt, clearing credit cards and so on but there is not a single example provided which shows it used in respect of credit scores or any other type of score. Whilst I can see that a person’s credit report may be described as accessible or easy to understand, or clear (and there is some evidence of this) that the term is not used to describe any type of score. Furthermore, based on this meaning (clearing debt) it has no association which would lend itself to combination with SCORE. The resulting mark CLEARSCORE is constructed from two different common words which are used widely in the English language but also have meanings within financial services industry. In combination, the applicant’s ‘CLEARSCORE’ is not descriptive of the services or a characteristic of those services. In conclusion, I do not

consider the evidence is sufficient to make good the claims made by the opponent and thus the objection to the application founded on section 3(1)(c) of the Act fails.

### **The objection under section 3(1)(b)**

28. With regard to its claim under this section the opponent stated in its notice of opposition:

*“3(1)(b) The sign ‘clearscore’ is a combination of English words consistent with the usual use of English grammar. Neither of the words CLEAR or SCORE is distinctive when considered independently and in relation to the services covered by the applications. The combination of the words CLEAR and SCORE does not create a distinctive mark that is greater than the sum of its two descriptive parts.*

*Alternatively, the sign ‘clearscore’ cannot serve to identify the services for which the applicant seeks registration as originating from a particular undertaking and so distinguish these services from those of other undertakings.”*

29. In its skeleton argument the opponent confirmed that in its view the application lacks distinctive character for the same reasons as set out with regard to section 3(1)(c) of the Act.

30. The applicant submitted at the hearing and in its skeleton argument that the opponent has made no new pleading in respect of section 3(1)(b) that hasn't already been made in respect of 3(1)(c).

31. The opponent's claim is that the applicant's mark is devoid of distinctive character because it is descriptive. I have found that the applicant's mark is more than the sum of its parts and is accordingly not descriptive. Consequently, the opponent's pleading under 3(1)(b) cannot succeed.

### **32. The opposition under s.3(1)(b) fails.**

## **Conclusion**

### **33. The opposition fails under sections 3(1)(b) and 3(1)(c) of the Act.**

## **COSTS**

34. The opposition having failed the applicant is entitled to an award of costs. Both parties are content with an award of costs in accordance with the scale provided in Annex A of Tribunal Practice Notice 4 of 2007. However, the opponent made the following submission in its skeleton argument:

*“23...The Applicant requests that it be taken into account when making the award [o]f costs that the Opponent, having petitioned unsuccessfully for a significant part of the Applicant’s evidence to be dismissed and then having declined the opportunity to file evidence in reply in the period formally allocated to it to do so, then requested the opportunity to submit evidence late into the proceedings immediately prior to the substantive hearing.”*

35. At the hearing I made it clear to Miss Chantrielle that the additional evidence that the opponent sought to file did not appear to advance its case and that if admitted, there may be subsequent cost implications. This was accepted by the opponent at the hearing. Having made the decision on this case, the additional evidence was not helpful and resulted in the hearing being about half an hour longer than necessary. It also put the applicant in the position where a response was required with little preparation.

36. I keep these factors in mind and award costs on the following basis:

Preparing a statement and considering the other side's statement:	£300
Preparation for and attending a hearing:	£800
Filing and considering evidence:	£600

**Total**

**£1700**

37. I order Experian Limited to pay Clear Score Technology Limited the sum of £1700. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

**Dated this 23rd day of January 2016**

A handwritten signature in black ink, appearing to be 'AI Skilton', written in a cursive style.

**Ms AI Skilton**

**For the Registrar,  
the Comptroller-General**